

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-216

June 12, 1998

NORTHERN UTILITIES, INC.,  
Request for Approval of Reorganization -  
Merger with NIPSCO Industries

ORDER APPROVING  
STIPULATION AND  
MERGER

WELCH, Chairman; Nugent, Commissioner

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## **I. Summary of Order**

We approve the Stipulation among the parties and find that the merger of Northern Utilities, Inc. with NIPSCO Industries, Inc. is not adverse to the public interest under the terms presented in the Stipulation.

## **II. Procedural History**

On March 20, 1998, Northern Utilities, Inc. (Northern), filed a request for approval of a reorganization pursuant to 35-A M.R.S.A. 708 to allow for its merger with a subsidiary of NIPSCO Industries, Inc. (NIPSCO), an Indiana corporation. Northern's parent corporation, Bay State Gas Company (Bay State) is also proposing to merge with NIPSCO in the same manner as is proposed for Northern. Bay State's proposal is currently before the Massachusetts Department of Telecommunications and Energy for approval. Northern must also obtain the approval of the proposed merger from the New Hampshire Public Service Commission.

The merger is proposed to take either of two possible forms: 1) the Preferred Structure: Northern's merger as a separate subsidiary of NIPSCO; or 2) the Alternate Structure: Northern's merger into, to exist as a division of, Northern Indiana Public Service Company (Northern Indiana), NIPSCO's largest public utility subsidiary. The form of the merger will ultimately depend on the decision of the Securities and Exchange Commission (SEC), which may approve the Preferred Structure as exempt from the provisions of the Public Utility Holding Company Act of 1935. If the SEC does not so hold, the merger will take place under the proposed Alternate Structure.

The Bay State Board of Directors unanimously determined that the merger is in the best interests of the company and its shareholders and common shareholders approved the Merger Agreement by a vote of 78.1%.

The Commission issued a Notice of Proceeding on April 10, 1998 by procedural order and by publication in newspapers of general circulation. These notices established an intervention deadline of April 27, 1998 and set a prehearing conference for April 29, 1998.

On April 28, 1998, Central Maine Power Company (CMP) asked to be included on the service list for this proceeding as an interested person. The Office of the Public Advocate (OPA) and NIPSCO participated in the prehearing conference and were granted intervention. The parties and Advisory Staff participated in discovery and in joint technical conferences with the New Hampshire Public Service Commission on May 6 and 26, 1998.

On May 19, 1998, CMP submitted a Petition for Late Intervention pursuant to Chapter 110, Section 720. In filings dated May 22, 1998, Northern and NIPSCO objected to CMP's late-filed petition for intervention. CMP did not file responsive comments to these objections on May 28th as allowed by Chapter 110, section 420(c). The Commission denied CMP's late-filed petition to intervene by Order dated June 3, 1998.

A Stipulation executed by OPA, Northern and NIPSCO was filed on May 29, 1998 and the Commission held a hearing on the stipulation followed by deliberations on June 3, 1998. At the hearing, James D. Simpson, Senior Vice-President and Leader of the Utility Segment for Bay State Gas Company, and Mark Maassel, Vice President of NIPSCO Industries Management Services Company presented oral testimony in support of the stipulation and merger. The prefiled testimonies of these witnesses dated March 20, 1998 were entered into the record as Northern Exhibit #1. The OPA also spoke in support of the stipulation and merger and the witnesses responded to questions from the bench.

### **III. Stipulation Provisions**

The Stipulation provides that, under either of the proposed corporate structures, the merger is consistent with the interests of Northern's customers and investors and satisfies the Commission's standard of review under 35-A M.R.S.A. §708(2). The Stipulation also provides that, under either corporate structure, the merger will not change the jurisdiction of the Commission over Northern's operations and that the Commission should express to the SEC its support of the Preferred Structure. Additionally, the Stipulation provides that should the merger occur under the Alternate Structure, the merger of Northern's property, franchise or permits with Northern Indiana should be granted pursuant to 35-A M.R.S.A. §1101 and that transfer of stock should be allowed pursuant to §1103.

Finally, the Stipulation provides that in a future proceeding the parties will not be precluded from making a request for, or argument in opposition to, the recovery of an acquisition adjustment in rates. Nor will any party be bound to accept, for ratemaking purposes in future proceedings, the capital structure resulting to Northern from the merger accounting entries.

OPA summarized its support of the merger stating that it should lend increased financial strength to Northern and its operations in Maine and that there should be significant opportunities for supply resource savings as a result of the merger. OPA noted that the parties had "agreed to disagree" on the need for recovery of the acquisition adjustment by reserving that issue for litigation in a later proceeding.

#### **IV. Discussion**

Our general criteria for approving stipulations include: whether the parties joining the Stipulation represent a sufficiently broad spectrum of interests; whether the process that led to the Stipulation was fair; and whether the stipulated resulted is reasonable, not contrary to legislative mandate, and is in the public interest. See *Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX*, Docket No. 94-123 at 4-5 (Mar. 17, 1998). Taking these general criteria into account and upon review of the specific terms of the Stipulation, we find the agreement to be reasonable and not contrary to the public interest.

Consequently, we approve the Stipulation and the merger. We find support for our decision in the lack of opposition among the participants and find that the reservations in the Stipulation holding aside the capital structure and ratemaking issues for a subsequent proceeding are appropriate.

We also note that there appear to be some benefits to Maine ratepayers in the Preferred Structure because there will be a separate Board of Directors overseeing Northern's operations and books and records will be separate. These factors should facilitate our continued review and oversight of Northern and its operations in Maine.

Should the merger go forward under the Alternate Structure, we will also require that the companies maintain separate books and records for the Northern operating division of Northern Industries.<sup>1</sup>

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<sup>1</sup> At the hearing, Mr. Maassel indicated that this would require

Accordingly, we

O R D E R

1. That the Stipulation and Agreement filed May 28, 1998 is approved;

2. That the merger of Northern Utilities, Inc. with NIPSCO Industries, Inc. of Indiana, is approved under either of the proposed corporate structures; and

3. That we will submit this Order indicating our support for the Preferred Merger Structure to the Securities and Exchange Commission for consideration in its review of NIPSCO Industries, Inc.'s merger application.

Dated at Augusta, Maine this 12th day of June, 1998.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: WELCH  
NUGENT

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the merged companies company to keep two sets of books because, as divisions of Northern Indiana, the operating results of the Northern and Bay State divisions would need to be merged on a monthly basis with those of Northern Indiana. Also, NIPSCO files a consolidated tax return each year.

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.